NOTES OF CASES.

Inheritance by and through Adopted Children.—In a recent Vermont case, Batchelder *v.* Walworth, 82 Atl. 7 (Jan. 1912), decided, under a statute substantially similar to 2614a Va. Code 1904, the question was whether a child of an adopted child since deceased, is entitled to inherent through such parent by right of representation a share in the adoptive parent's intestate estate. The court answered this question in the affirmative.

The doctrine of adoption was unknown to the common law of England, and in this country, in states whose jurisprudence is based exclusively on that system, it exists only by statute. Matter of Thorne, 155 N. Y. 140, 49 N. E. 661; Burrage *v.* Briggs, 120 Mass. 103; Ross *v.* Ross, 129 Mass. 243, 37 Am. Rep. 321; Morrison *v.* Estate of Sessions, 70 Mich. 97, 38 N. W. 249, 14 Am. St. Rep. 500; Batchelder *v.* Walworth (Vt.), 82 Atl. 7, 8.

It has, however, been recognized by the civil law from the earliest days of its existence, and on the provisions of that law our statute, as well as largely the statutes of adoption in the different states of the Union, has been founded. It is therefore reasonable and proper to look to the civil law for the proper definition of the term, and in aid of the interpretation of the provisions in question. Powers *v.* Hafley, 85 Ky. 671, 4 S. W. 683, 9 Ky. Law Rep. 369; Gray *v.* Holmes, 57 Kan. 217, 45 Pac. 596, 33 L. R. A. 207; Humphries *v.* Davis, 100 Ind. 274, 50 Am. Rep. 788.

By the civil law before the time of Justinian, the effect of adoption was to place the person adopted in the same position he would have held had he been born a son of the adopter. All the property of the adopted son belonged to the adoptive father. The adoptive son was heir to his adoptive father, if intestate, bore his name, etc., and shared the sacred rites of the family he entered. It sometimes happened under this law that a son lost the succession to his own father by being adopted, and to his adoptive father by a subsequent emancipation. To remedy this Justinian provided that the son given in adoption to a stranger should be in the same position to his own father as before, but gained by adoption the succession to his adoptive father if he die intestate. And by that law the adopted son is declared "Assimilated, in many points, to a son born in lawful matrimony." Sandars' Justinian, 113, 115, 119.

Although the direct effects of adoption under our statute are not left to rest upon the determination of the meaning of that term by construction, yet such effects expressly declared by the lawmaking power correspond in most respects with the principles of the early civil law; as respects his controls, and the duties and obligations resulting from the adoption, the person adopted is placed in exactly the same position he would have held had he been born a son of the adopter; and in such respects all rights, duties, and obliga-

tions between the child and his natural parents terminate. And, except as to property expressly limited to the heirs of the body of the adoptive parent (an exception of no apparent moment on the question of the status created), the right conferred upon the child to inherit from such parent is also measured by that in law of a natural child. We think it logically follows from the authorities to which reference has been made that under the statute, construed in the light of the civil law, the adopted child by the event of the adoption becomes the legal child of the person or persons making the adoption, and stands as to the property of the adoptive parent in the same position as a child born in lawful wedlock. Ross *v.* Ross, cited above; Buckley *v.* Frazier, 153 Mass. 525, 27 N. E. 768; Flannigan *v.* Howard, 200 Ill. 396, 65 N. E. 782, 59 L. R. A. 664, 93 Am. St. Rep. 201; Atchison *v.* Atchison's Ex'rs, 89 Ky. 488, 12 S. W. 942, 11 Ky. Law Rep. 705; Hilpire *v.* Claude, 109 Iowa, 159, 80 N. W. 332, 46 L. R. A. 171, 77 Am. St. Rep. 524; Moran *v.* Moran, 151 Mo. 558, 52 S. W. 378.

Imprisoning Witnesses to Secure Their Attendance.—In a recent case in Georgia (Crosby *v.* Potts, 8 Ga. App. 463) the court committed a witness to jail in default of bail for appearance at the trial. He sued out habeas corpus, and his chief contention was that the court had no power to pass the order committing him to jail unless he would give bail for his appearance, because no such power existed at common law, and it had not been given by statute in the state. The court said:

"We do not think that the contention of counsel is well taken that no power existed at common law by which the courts could compel a witness to give bail for his appearance at the trial. As Bayley, B., said as to a somewhat similar proposition in the case of Summers *v.* Moseley, 2 Cr. and M. 489, 'Prior to that statute [the statute of Elizabeth, supra] there must have been a power in the crown (for it would have been utterly impossible to carry on the administration of justice without such power) to require the attendance in courts of justice of persons capable of giving evidence, and the production of documents material to the cause, though in the possession of a stranger.' The fact that no precedent of a common-law court's having done the precise thing done in this case does not negative the fact that the courts did have the power. As Professor Wigmore says in his great work on Evidence, speaking along this general line, 'But how culpable is this self-stultifying concession by a court of justice that it knows of no process to execute its powers for enforcing a conceded duty! There cannot be a precise precedent for everything. Where there is a clearly established principle, the lack of a precedent is no obstacle. There must some time be a first precedent. Were the judges of Charles II or George III, who themselves were but the followers of six centuries of royal judges, the